

Planning Commission Date: June 27, 2007

Item No. 1.

## MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Felix Reliford

Public Hearing: Yes:   X   No:       

Notices Mailed On: 6/15/07

Published On: 6/7/07

Posted On: 6/15/07

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**TITLE:** ADMINISTRATIVE PERMIT NO. AD2007-8: A REQUEST TO CONSIDER THE REVOCATION OR MODIFICATION OF USE PERMIT NO. UP2004-15 TO THE CITY COUNCIL FOR NON-COMPLIANCE WITH SPECIAL CONDITION OF APPROVAL

Permits: Use Permit No. UP2004-15

Location: 148 W. Calaveras Blvd.

APN: 022-24-037

**RECOMMENDATION:** Continue the Public Hearing until the August 22, 2007 meeting to allow Staff the time to review and monitor the proposed new parking arrangement over the next two months and report back to the Planning Commission.

Applicant(s): City of Milpitas

Property Owner(s): Calaveras Square, 3645 Warner Drive, San Jose, CA 95127 Attn: Sam Lacorte

Previous Action(s): "S" Zone Approval, Use Permit

General Plan Designation: General Commercial

Present Zoning: General Commercial with an Office and "S" Zone Overlays (C2-00-S)

Existing Land Use: Multi-tenant shopping center

Agenda Sent To: Sam Lacorte- Property Owner, Robert Salerno, Business Owner, Chris Smithers-Avis Rental Car and Thomas Olsson-Avis Rental Car

Attachments: Previous Use Permit Staff Report with Special Conditions of Approval  
Previous Letter from Avis Rental Car  
Milpitas Zoning Ordinance Section XI-10-63.06-Revocation, Suspension, Modification

Avis Action Steps by Staff-Past History of Site Monitoring and Meetings with Avis

Staff Letter to Property Owner, Business Owner and Avis from Staff-dated June 6, 2007

Letter from Applicant's Attorney- dated June 22, 2007

PJ No. 2376

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**BACKGROUND:**

At its meeting on August 11, 2004, the Planning Commission approved Use Permit No. UP2004-15-A request to operate an auto rental agency at 148 W. Calaveras Blvd. Special Condition No. 3 of the approval stated the following:

3. This use shall not use more than seven (7) parking spaces at any time (P)

This special condition of approval was specifically placed on this use permit so that the proposed rental car agency would not be allowed to use the remaining parking spaces in the shopping center which are allocated to other businesses in the center. As stated by the letter from Avis included in the Commission's attachments, Avis Rental Car agreed to this special condition of approval at the time of the use permit review.

Since that time period over the past two years, staff has received several complaints about Avis exceeding the number of parking spaces that have been allocated by the use permit. Since July 6, 2005, staff has conducted on-going site monitoring visits and has determined that the number of parking spaces by Avis has exceeded the seven (7) spaces allocated on numerous occasions. Staff has had several meetings and conversations with the business manager to address this issue, only to discover that the parking continues to exceed the use permit requirement. The business has been levied violation fees in the amount of \$100.00-first time offense, \$200.00-second offense and \$500.00 for a third time offense within 12-month period. Even with the violation fines, staff has still not been able to achieve compliance by the business.

The Milpitas Zoning Ordinance Section XI-10-63.06 Revocation, Suspension Modification authorizes the Planning Commission to review these types of issues of non-compliance with a final recommendation to the City Council. A copy of the Zoning Ordinance pertaining to this matter is included in the Commission's attachments.

**Proposal by Avis Rental Car Attorney**

Staff has been contacted by Avis Rental Car Attorney, which has informed Staff that Avis has obtained agreements with two hotels within the City that would be willing to accommodate their overflow of parking from their existing operation at 148 W. Calaveras Blvd. This proposal has just been recently sent to staff and we would like time to review it for the following issues:

- Does the two hotels have sufficient parking to allocate parking spaces to Avis Rental Car?

- What are the terms and time period established within the agreements with the two hotels?
- If the answer to the two questions above are satisfactory to staff, staff would like a period of time to monitor the situation to make sure that the proposed arrangement is working and effective for all parties involved.

Staff recommends that this matter be continued until the Planning Commission meeting of August 22, 2007, so that staff can review the parking at the hotels, the proposed agreements, monitor the site and report back to the Planning Commission on the status of the proposed parking arrangement.

**RECOMMENDATION:**

- 1) Open the Public Hearing
- 2) Continue this matter until the Planning Commission meeting of August 22, 2007 and direct Staff to report back on the status of the proposed parking arrangements.

Date: August 11, 2004 Planning Commission Meeting

Item No. 1

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: Public Hearings

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: ☒ No: ☐

Notices Mailed On: 7-30-04 Published On: 7-29-04 Posted On: 7-30-04

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**TITLE:** USE PERMIT NO. UP2004-15

Proposal: A request to operate an auto rental agency

Location: 148 West Calaveras Boulevard

APN: 022-24-037

**RECOMMENDATION:** Approval with Conditions

Applicant: Avis Rent A Car, 2551 San Ramon Valley Boulevard #106, San Ramon, CA 94583, attn: Diane Gibson

Property Owner: Calaveras Square, 3645 Warner Drive, San Jose, CA 95127, attn: Sam Lacorte.

Previous Action(s): "S" Zone Approval, Use Permit

General Plan Designation: General Commercial

Present Zoning: General Commercial with an Office and "S" Zone Overlays (C2-OO-S)

Existing Land Use: Multi-tenant shopping center

Environmental Impacts: See Page 4

Agenda Sent To: Applicant & Owner (same as above)

Attachments: Plans  
Letter of description from applicant

PJ#2376

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### BACKGROUND

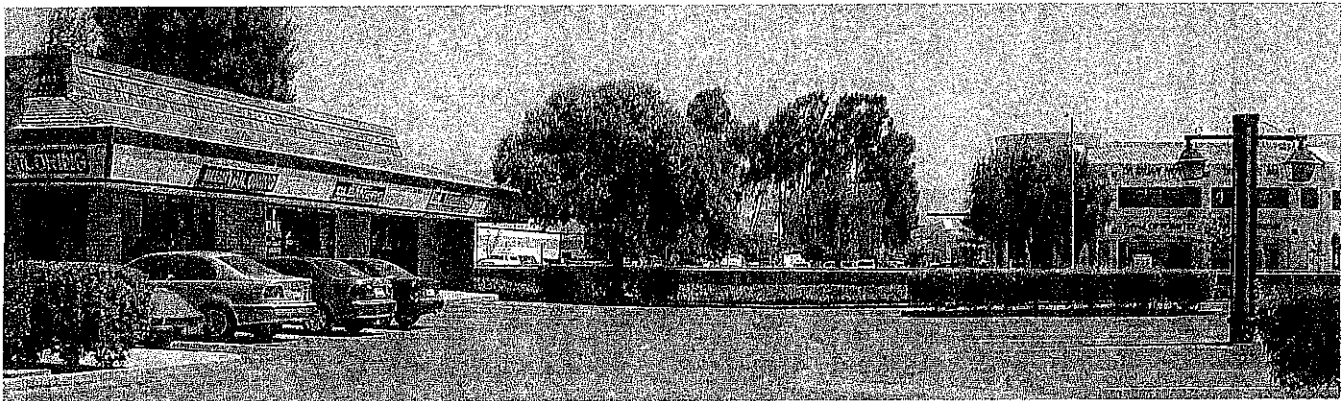
In July 1976, the Planning Commission approved an "S" Zone application for the development of four commercial retail buildings at Calaveras Square. Subsequent approvals include "S" Zone amendments for minor building modifications, monument signs and a sign program. Additional approvals include use permits for a freestanding sign and internet café, and an amendment to the existing sign program.

The Calaveras Square shopping center is located in the Midtown planning area. The center is bound by Calaveras Boulevard on the west, Abel Street on the east and Serra Way on the south. The shopping center consists of four (4) buildings with 21,000 square feet of commercial retail space and is surrounded by other commercial land uses.

### THE APPLICATION/PROJECT DESCRIPTION

This application is submitted pursuant to Section 57 (Conditional Use Permit) and Section 19.03-4 of the Zoning Ordinance. Section 19.03-4 allows auto, mobile home, recreational vehicle and truck rental agencies as a conditional use in the C2 district. The applicant is requesting approval to operate a rental car agency out of a 1,050 square foot space, located at the southeast corner of the building.

While the applicant will have vehicles on-site, it is not proposing to have a large number of vehicles on the site at any given time. Many of the vehicles will be transported in on an as needed basis from different locations in the bay area. The only uses within the tenant space are offices, storage area and cashier areas.



View looking east

### ISSUES

#### Parking

Based on a tenant space of 1,050 square feet, the site has an allocation of five (5) parking spaces. While this would normally be adequate for an office type of use, the applicant has stated a need for seven (7) parking spaces to accommodate employees and parking for a couple of rental cars. Based on the need to have seven parking spaces, the tenant space will not have enough parking to accommodate the use. However, the shopping center, which includes four parcels, has a recorded reciprocal parking agreement, which allows parking to be used by all tenants of the four parcels. The parcel to the west (Bakers Square restaurant), has an excess capacity of two (2) parking spaces, such that the project can use both of the excess parking spaces from the adjacent parcel to meet the required parking demand. In addition, a survey of the site was completed by the applicant, which showed on average that 15 percent of the parking was occupied during peak hours. Based on the availability of excess parking spaces and existing demand levels, there will be adequate parking for the use. However, to ensure that there continues to be adequate parking for all uses, *staff recommends* that the use be limited to seven (7) parking spaces.

### **Neighborhood/Community Impact**

The proposed tenant is expected to have a positive community impact by providing a complementary use to the existing retail uses currently located in the shopping center. It will bring additional patrons to the shopping center, which will benefit all tenants of the center. Therefore, staff concludes that the restaurant as conditioned, will not negatively impact the surrounding neighborhood.

### **USE PERMIT FINDINGS**

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The following sections explain how these findings can be made for the proposed project, as conditioned.

#### **Conformance with the General Plan**

The project conforms to the General Plan in that the use directly relates to:

*Implementing Policy 2.a-I-3*, which encourages economic pursuits, which will strengthen and promote development through stability and balance,

*Implementing Policy 2.a-I-6*, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector, and

The proposed rental car agency will provide a service for the needs of residents and visitors alike to the City of Milpitas. There are not many locations within the City of Milpitas where someone can rent an automobile, thus, the proposed use would be providing a service not commonly found within the City.

#### **Conformance with the Midtown Specific Plan**

The project is located within the Midtown Specific Plan area. Because the proposed use will be located in an existing building and does not trigger any Midtown upgrades, it will not have to conform to Midtown design standards and requirements. Triggers for Midtown include construction of a new building or 50% more parking required for the new use than the previous use, or increase of gross floor area by 10% or over 500 square feet whichever is less.

#### **Conformance with the Zoning Ordinance**

The proposed project is located in the General Commercial Zoning District (C-2). Part of this district's purpose is to "include those commercial uses in which shopping may be conducted by people walking to several stores as in a center and may include uses customarily of a single-purpose character served from an immediately parked automobile." The project, with recommended conditions of approval, complies with the City's zoning ordinance for the General Commercial district, because the business is directly tied to an automobile use and it is a use that is conditionally allowed in the zoning district.

## RECOMMENDATION

Close the Public Hearing. Approve Use Permit No. P-UP2004-15, based on the Findings and Special Conditions of Approval listed below.

## FINDINGS

1. The proposed project is categorically exempt from the provisions of CEQA pursuant to Class 1, Section 15301 (Existing Facilities) of the state CEQA Guidelines.
2. The proposed rental car business is consistent with the City of Milpitas Zoning Ordinance and General Plan in terms of land use for General Commercial zoning as it is a business use that is primarily oriented to the automobile customer.
3. As conditioned, the rental car business will not be detrimental or injurious to the public health, safety, and general welfare to adjacent tenants or the surrounding community because the project will not have any impacts associated with the project.

## SPECIAL CONDITIONS

1. This Use Permit No. P-UP2004-15 approval is for an approximate 1,050 square foot, rental car business as shown on approved plans dated August 11, 2004, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use may require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
3. This use shall not use more than seven (7) parking spaces at any time. (P)
4. All roof-top equipment associated with this tenant space shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)
5. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
7. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)
8. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI:
  - a. Increase the service frequency for existing Recycling 1-cyd bin to two times per week.

- b. An adequate level of service for trash collection, minimum of one 4-cyd bin collected 2X/week.

After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)

(P) = Planning Division

(E) = Engineering





**We try harder®**

**Avis Rent A Car  
System, Inc.**

2551 San Ramon Valley Boulevard  
Suite 106  
San Ramon, California 94583

Tel: (925) 314-0815  
Fax: (925) 314-9832

## **Avis Expansion Plans**

Avis Rent A Car System, Inc. and its subsidiaries operate the world's second largest general-use car rental business, providing business and leisure customers with a wide range of services at more than 1,700 locations in the United States, Canada, Australia, New Zealand and the Latin American/Caribbean region. Avis is recognized as the industry leader in applying new technologies and is one of the world's top brands in customer loyalty. The company is a wholly owned subsidiary of Cendant Corporation. As of September of 2003 Avis has 731 corporate locations in the United States, 233 locations are at airports and 498 locations are off airport.

Avis Rent A Car is seeking to expand and open a retail car rental office in Milpitas. We feel confident that a location in Milpitas would benefit our customers as well as the local economy and be mutually rewarding. Just to name a few, the following corporations are already our accounts that we would service from Milpitas: Cisco Systems, Inc., KLA-Tencor, Linear Technology Corp., LSI Logic, Maxtor, Seagate Technology Inc., and Solectran Corporation.

Below is a general description of how our proposed location at 148 W. Calaveras Blvd. would operate.

### **Premises Description and Tenant Improvements:**

The location is 1050 sq.ft., and is part of a larger, multi-tenant center. Avis will not make any tenant improvements, we will use the area as is.

### **Vehicle Parking:**

Avis is requesting to park 7 vehicles (Including employee parking). (A sample vehicle availability form indicates how the rentals and returns balance out). As reservations increase we have drivers bring in replacements from other locations such as San Jose Airport.

### **Hours of Operation and Staffing:**

Hours are based upon consumer demand, but generally are as follows:

Monday – Friday 8:00 am to 6:00 pm  
Saturday & Sunday 9:00 am to 2:00 pm

The staff size runs from 1 to 2 people.

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**Traffic Impact:**

Our suburban locations have much less volume than our airport operations. On average we rent 10 cars per day and have a smaller number return. Over a ten-hour day we have 16 customers (10 rentals plus 6 returns), or 1.6 per hour. Therefore our impact on the community is negligible. (A separate parking study attached)

**Vehicle Service and Washing:**

Avis will have all vehicle service and repairs done at off site local vendors. There will be no mechanical repair, oil changes or refueling done on site. Avis will refuel its cars at a nearby gas station. However, some cars will receive "light" cleaning in the parking spaces away from the building. This light cleaning would consist of cleaning the windshields with water or Windex.

**Signage will be addressed separately.**

**Outdoor signage:**

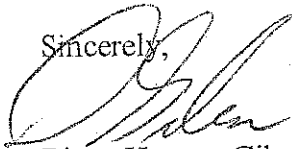
Avis is requesting to place an Avis identity logo sign on the front of the building. We cannot emphasize enough, how important this sign would be to the success of our business. Avis is a retail use and exposure to our logo to the traffic traveling along any major street is one of the important ways we let our customers know are location. Signage will be applied for separately in accordance with all City codes.

**Examples:**

Attached are several pictures of other off airport Avis locations on the bay area.

We are looking forward to pursuing our goal of opening a location in the near future. If you have any questions I can be reached at 925 250 8111 or [Dgibson@Avis.com](mailto:Dgibson@Avis.com).

Sincerely,



Diane Hagner-Gibson  
Local Market Development Manager  
2552 San Ramon Valley Blvd. #106  
San Ramon, Ca 94583

## **Section 63 Enforcement and Penalty**

### **XI-10-63.01 Enforcement**

All departments, officials and public employees of the City of Milpitas vested with the duty or authority to issue permits shall conform to the provisions of this Chapter and shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this Chapter; and any permit or any business license issued in conflict with the provisions of this Chapter shall be null and void. (Ord. 38.600, 3/4/86; Ord. 38 (part), 3/15/55)

### **XI-10-63.02 Penalty**

It shall be unlawful for any person to violate any of the provisions of this Chapter. Any person convicted of violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment. Each day that a violation of this Chapter continues shall be considered a separate offense.

Any use of a premises or a building which deviates from or violates any of the provisions of this Chapter shall be termed an illegal occupancy and the person or persons responsible therefor, shall be subject to the penalties herein provided. (Ord. 38 (part), 3/15/55)

### **XI-10-63.03 Declaration of Public Nuisance**

The use of any land, building or other structure hereafter established or conducted or the present use of any land, building or other structure hereafter extended or enlarged or the erection, construction, moving, conversion, remodeling or alteration of any building or other structure contrary to the provisions of this Chapter shall be and the same is hereby declared to be a public nuisance, and the Attorney for the City of Milpitas shall, upon order of the City Council, immediately commence action or proceedings for the abatement or removal or injunction thereof in the manner provided by law. (Ord. 38 (part), 3/15/55)

### **XI-10-63.04 Order to Stop Work**

Whenever any work is being done contrary to the provisions of this Chapter, the Building Official may order the work stopped by notice in writing served on any person engaged in the doing of such work or in the causing of such work to be done, and any such person shall forthwith stop such work until authorized in writing by the Building Official to proceed with such work. (Ord. 38 (part), 3/15/55)

### **XI-10-63.05 Remedies Cumulative**

The remedies provided for in Section XI-10-63 inclusive shall be cumulative and not exclusive. (Ord. 38 (part), 3/15/55)

### **XI-10-63.06 Revocation, Suspension, Modification**

63.06-1(a) The City Council shall have the power to revoke, suspend or modify any permit, variance or approval issued under the provisions of this Chapter (including, but not limited to conditional use permit, variances, or "S" Zone approval) for breach of any condition or requirement imposed upon the granting of said permit, variance or approval.

(b) The Planning Commission shall have the power to revoke or modify a Use Permit under the provisions of this Chapter when a land use has been abandoned and/or a different permitted or conditional use is approved for the site.

63.06-2(a) The revocation, suspension, or modification, of a land use permit, as per Subsection XI-10-63.06-1(a) above, shall only be made after written notice of violation is mailed to the holder of the permit. The permit holder shall be given an opportunity to explain why the permit should not be revoked, suspended or modified. The Planning Commission and City Council shall hold public hearings in accordance with Sections XI-10-64.01, XI-10-64.02 and XI-10-65 regarding said permit. After receiving the Planning Commission's recommendations on said permit, the City Council at its discretion may revoke, suspend or modify the previously issued permit upon making any of the following findings based on the evidence in the record:

## ZONING, PLANNING AND ANNEXATION

(1) There was a violation of a condition of the permit, and the violation was not abated, corrected or rectified within the time specified on the notice of violation;

(2) There was a violation of law relating to the permit and the violation was not abated, corrected or rectified within the time specified on notice of violation;

(3) The permit or approval is being exercised in a manner which creates a public nuisance; or

(4) The permit or approval is being exercised in a manner which is contrary to the public health, safety and welfare.

(b) The revocation or modification of a Conditional Use Permit, as per Subsection XI-10-63.06-1(b) above, shall only be made after the Planning Commission holds a public hearing, per Section XI-10-64, and makes the following finding:

(1) The use for which the permit was issued has been abandoned in whole or in part for a period of at least eighteen (18) months, or a different permitted or conditional use is approved for the building or site. (Ord. 38.761 (part), 5/20/03; Ord. 38.706 (part), 7/16/96; Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

### **XI-10-63.07 Administrative Citations**

When he or she determines that one or more violations of this Chapter have occurred, the City Manager and his or her designee may issue administrative citations pursuant to the procedures set forth in Sections XI-10-63.08(a) through XI-10-63.08(f).

(a) Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 30 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.

(b) Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the

violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI-10-63.09 or impose the administrative fine below and administrative citation provisions under Section XI-10-63.08.

(c) Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.

(d) Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI-10-63.09 or impose the administrative fine below and administrative citation provisions under Section XI-10-63.08. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.

The schedule of fines for administrative citations issued for violations of this Chapter is as follows:

(1) Not to exceed \$100 for the first violation;

## AVIS Action Steps

### **First Case:**

Case Opened 7/6/05.

Verbal Warning Given 7/8/05. Warning included discussion of citation process and revocation should repeated violation occur.

Memo to City Manager issued 7/8/05 see attached.

Case Closed 8/2/05.

### **Site Inspections Occurred**

7/7/05 – 16 vehicles

7/8/05 – compliance

7/12/05 – compliance

7/15/05 – compliance

7/21/05 – compliance

7/29/05 – compliance

8/19/05 – compliance

### **Second Case:**

Case Opened 9/27/06.

Verbal Warning Given 9/28/06. Warning included discussion of citation process and revocation should repeated violation occur.

Email to City Manager with status issued 9/28/06.

### **Correspondence**

Courtesy Warning Notice to Abate 10/4/06

Citation Issued – 11/8/06

Second Citation Issued – 3/20/07

Third Citation Issued – 5/1/07

Fourth Citation Issued – 5/23/07

Notice of Public Hearing to Revoke Use Permit – 6/6/07

### **Meetings Held**

11/16/06 – Chris Smithers, Dean Moyle, Tom Williams and Gloria Anaya met at City Hall and discussed parking study and increase in number of vehicles allowed would require an application to be submitted and a meeting held before the Planning Commission.

5/2/07 - Chris Smithers, Tom Olson, Tom Williams, Gloria Anaya and Chris Schaller met at City Hall and discussed parking and the excessive number of vehicles on site.

### **Phone Conversations**

10/19/06 - Gloria Anaya discussed situation with Richard Ching who informed her Dean Moyle who be new contact regarding this case.

11/3/06 - Gloria Anaya discussed situation with Chris Smithers Area Supervisor AVIS.

11/13/06 - Gloria Anaya discussed situation with Sam LaCorte property owner.

11/13/06 - Gloria Anaya discussed with Chris Smithers the citation and setting up meeting between City and AVIS.

11/14/06 - Gloria Anaya left voicemail message for Chris Smithers regarding meeting requested.

**Phone Conversations (cont.)**

11/15/06 – Chris Smithers confirmed 11/16/06 meeting date.

12/5/06 - Gloria Anaya left voice mail message with Chris Smithers regarding observed excessive vehicles on site and outcome of parking study.

12/8/06 – Dean Moyle called to say that Chris Smithers is on vacation. Chris to call back with results of parking study.

12/13/06 – Chris Smithers called and stated parking study has been initiated today. Will contact with results.

12/28/06 – Tom Olson tried to contact Gloria who is on vacation. Tom spoke with Chris Schaller regarding paying citation fine and when would the City complete the parking study. Chris Schaller informed Tom that it was AVIS responsibility to conduct the parking study.

1/4/07 – Tom Olson contacted Gloria Anaya and discussed the citation and parking study.

1/12/07 - Gloria Anaya contacted via email that parking study had began.

1/29/07 - Gloria Anaya left message for Tom Olson requesting status of parking study.

3/5/07 – Tom Olson provided Gloria Anaya with copy of parking study which determined that AVIS could not increase the number of vehicles on site.

4/30/07 - Gloria Anaya received complaint from R/P stating excessive number of vehicles on site.

4/30/07 - Gloria Anaya contacted Chris Smithers and Tom Olson requesting a meeting between the City and AVIS.

5/1/07 - Gloria Anaya confirmed meeting date for 5/2/07 with AVIS.

5/25/07 – City Manager contacted Chris Schaller requesting immediate site check to determine status of AVIS vehicles. Business determined to be in violation.

5/29/07 - Gloria Anaya left voice mail messages for Chris Smithers, Tom Olson and Dean Moyle of City's decision to begin the process of revocating AVIS's use permit.

5/29/07 - Gloria Anaya spoke with Chris Smithers and AVIS attorney regarding the decision to proceed with revocation.

**Site Inspections Occurred**

9/28/06 – 10 vehicles

9/29/06 – Compliance

10/3/06 – Compliance

10/4/06 – 14 vehicles

10/9/06 – Compliance

10/10/06 – 8 vehicles

10/11/06 – Compliance

10/20/06 – Compliance

10/23/06 – Compliance

10/24/06 – Compliance

10/25/06 – Compliance

11/6/06 – 11 vehicles

12/4/06 – 11 vehicles

3/15/07 – 14 vehicles

4/30/07 – Compliance

5/1/07 – 8 vehicles

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**Site Inspections Occurred (cont.)**

5/2/07 - Compliance

5/7/07 - 12 vehicles

5/14/07 - Compliance

5/21/07 - 10 vehicles

5/25/07 - 14 vehicles

5/29/07 - 16 vehicles

5/30/07 - 13 vehicles

5/31/07 - 14 vehicles

6/1/07 - 8 vehicles

6/5/07 - 8 vehicles

6/7/07 - 9 vehicles

6/11/07 - 8 vehicles

6/14/07 - 8 vehicles

6/15/07 - Compliance

6/18/07 - Compliance

# MEMORANDUM

*Department of Planning & Neighborhood Services*

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**To:** Charles Lawson, Acting City Manager  
**From:** Tambri Heyden, Acting Planning and Neighborhood Services Director  
**Subject:** Avis Rent-a-Car – 148 W. Calaveras Blvd.  
**Date:** July 8, 2005

This memorandum provides a status report regarding the complaint received about the number and location of cars parked at Avis Rent-a-Car. The following conditions relative to this issue were approved in connection with Avis' use permit:

- Condition #3 - This use shall not use more than seven (7) parking spaces at any time.
- Condition #9 - The applicant shall not park rental vehicles in front of tenant spaces.

Police and Housing & Neighborhood Preservation (HNP) staff inspected the premises on July 7, 2005 to verify the complaint received. It was observed that Avis had 16 rental cars parked at the premises. Two of those vehicles were parked directly in front of other tenant spaces.

Staff reviewed the use permit conditions with the Avis business manager on site and informed him of the observed violations. He indicated that he would be able to comply by today – July 8, 2005. Therefore today, Police and HNP staff re-inspected the site and observed five rental cars on the premises bringing Avis into compliance with their use permit conditions.

Staff thanked the business manager for complying and advised him that staff would conduct periodic re-inspections to ensure continual compliance. Re-inspections are done in cases like this given the short time needed to comply with such a violation and how quickly this type of violation could recur, although the zoning code allows a maximum of 15 days to comply. Also, depending on the cooperation staff experiences with the violator, with this type of business violation that can be quickly resolved, it is common for staff to give a verbal warning for the first offense without issuing a written first violation notice since by the time the violator receives the mailed violation notice, the violation is likely to already have been addressed. However, if the violator repeats the offense, it is then that a first violation notice is issued.

During today's re-inspection, the Avis business manager was warned that if the business is found to be in violation again, the City would issue a violation notice requiring the business to be brought into compliance within the prescribed timeframe. In addition, it was noted that a fine would be levied if the business was not brought into compliance within the prescribed timeframe – a \$100 fine for a first offense; \$200 for a second offense and \$500 for a third or more offense within a 12-month period. The business manager was also advised that if the business was repeatedly in violation, that would be grounds for the City to evaluate revoking their use permit.





# CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

June 6, 2007

Mr. Robert Salerno, Business Owner  
Avis Rent Car Systems, Inc.  
2551 San Ramon Valley Boulevard #106  
San Ramon, CA 94583

**Re: Revocation or Modification to Conditional Use Permit No. UP2004-15 (Avis Rental Car at 148 W. Calaveras Blvd., Milpitas, CA 95035)**

Dear Mr. Salerno:

Please be advised that the City of Milpitas Planning Commission at its meeting on **Wednesday, June 27, 2007 at 7:00 p.m.** at Milpitas City Hall, 455 E. Calaveras Blvd., will be holding a public hearing on the issue of Conditional Use Permit No. UP2004-15. The public hearing will be held in order to consider recommending to the Milpitas City Council whether the use permit shall be revoked or modified due to lack of compliance with the special condition of approval, specifically; Special Condition No. 3 which states:

(3) The use shall not use more than seven (7) parking spaces at any time.

Since July 6, 2005, the City of Milpitas Code Enforcement Division has attempted to work with Avis Rental Car to address this matter. After receiving assurances from Mr. Chris Smithers and Mr. Thomas Olsson of compliance with the special condition of approval, our site inspections has continuously demonstrated that the use has consistently exceeded the seven (7) parking spaces as condition of approval for the use permit. The City of Milpitas has issued four (4) code citations regarding this matter; we have also attempted to meet with Mr. Smithers regarding this matter, but were told that he was too busy to meet with the City.

Please consider this letter as an official notice that this matter will be agendized before the Milpitas Planning Commission. You will be receiving the Planning Commission staff report prior to the hearing date and also have the opportunity to address the Planning Commission regarding this matter.

If you have any questions, please do not hesitate to contact me at (408) 586-3071.

Sincerely,

Felix J. Reliford  
Interim Director, Planning and Neighborhood Services

CC: Milpitas City Attorney Office  
La Corte Jack S Trustee & Et Al (Sam La Corte, Property Owner)  
Mr. Chris Smithers- Avis Rental Car  
Mr. Thomas Olsson- Avis Rental Car

Attachment: Previous PC Staff Report-dated August 11, 2004  
Letter from Avis

June 22, 2007

**VIA EMAIL ONLY (freliford@ci.milpitas.ca.gov)**

Felix Reliford  
Interim Planning Director  
Milpitas City Hall  
455 East Calaveras Blvd.  
Milpitas, CA 95035

**Re: June 27, 2007 Public Hearing Concerning Administrative Permit No.  
AD2007-8 Issued to Avis Rent A Car For 148 Calaveras Boulevard, Milpitas,  
California  
Our File No.: 4720.96**

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Dear Mr. Reliford:

This office has been retained by Avis Rent A Car ("Avis") to represent it with respect to the above-referenced hearing with the City of Milpitas ("City") regarding the Administrative Permit No. AD2007-8 Issued to Avis Rent A Car For 148 Calaveras Boulevard ("Use Permit"). Per your request, Avis submits this letter in response, setting forth the various measures it has taken to ensure compliance with its Use Permit.

As a general matter, Avis remains unclear as to the nature of the complaints that have been made by one individual business owner at the Calaveras Square Shopping Center ("Center"). As all parties involved, including Avis' Landlord at the Center as well as several City officials I have spoken with, seem to agree, the reality of the parking situation at the Center is that there is always ample parking available at the Center and that this individual is not actually suffering any harm whatsoever. I have enclosed several pictures taken at regular intervals throughout the day in the past week at the Center demonstrating the abundance of available parking. By the date of the hearing, pictures will be available for several more recent days, which will further demonstrate that parking availability is not an issue at this Center.

Moreover, as demonstrated by the parking study that was recently conducted, which study was paid for by Avis and voluntarily provided to the City, pursuant to the City's parking density regulations the Center is currently at capacity and cannot support any further businesses. As such, any concern that parking availability at the Center would or could change in the future is unfounded. I have also enclosed a copy of that parking study, which has previously been provided to the City, for your reference and convenience.

Avis accordingly feels unfairly targeted by the complaints made and the City's response. For instance, after informing the City that Monday mornings around 8:00 am are particularly busy times during which many customers chose to return their vehicles, a City inspector choose that precise time to count the number of Avis cars parked at the Center and issue a citation for violation of the Use Permit. Avis feels that the information it provided to the City in the spirit of resolving these issues was not used in good faith. Instead, it would appear that the City is purposely targeting those times Avis candidly informed the City that it was more likely that there could be compliance issues. This is especially true since Avis obviously cannot control when customers chose to return their rental cars. Avis would prefer to maintain a presence in Milpitas, but feels unwelcome and pressured at this time to abandon its Milpitas location.

Nevertheless, Avis has taken very seriously the City's concerns that Avis is allowing too many vehicles to occupy parking spaces at the Center and has taken numerous affirmative actions in its attempts to ensure total compliance at all times. In addition to paying for the parking study referenced above, Avis has also discussed agreements with two off-site hotels to manage the overflow parking. Specifically, Avis has installed a direct "ring down" telephone between Avis and the Hilton Hotel near the Center which allows Avis to have employees at the Hilton retrieve cars from Avis and park them in the Hilton parking lot. Hilton Hotel has dedicated eight (8) parking spaces for exclusive Avis use in the Hilton parking lots and an agreement to accommodate more if the need arises. Additionally, Avis has discussed a similar agreement with the Days Inn near the Center, which, if the Hilton were unable to accommodate all of the overflow cars, would provide additional overflow parking by way of a direct "ring down" telephone. While the Days Inn has already stated it is amenable to such an arrangement, Avis does not anticipate the need for the additional spaces at the Days Inn since Avis has also been diligent in routing overflow cars to its locations outside of Milpitas.

In a previous meeting with the City, the City suggested as an additional measure to help ensure compliance that Avis' Landlord specifically designate seven (7) spaces in the parking lot for the Center to be reserved as Avis' available parking spaces. Both Avis and its Landlord agree that this is a good suggestion and hereby request that the City formally, in writing, request that the Landlord so designate seven parking spaces for Avis' use. Avis' Landlord is willing to do so, but only upon written request from the City.

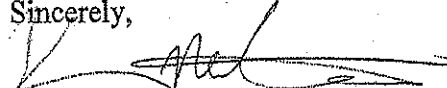
Finally, City officials also suggested a meeting between Avis and the single individual responsible for the complaints made against Avis. Avis has always welcomed such a meeting. However, since that time, instead of continuing to work toward an amicable resolution to this matter, the City "changed tacts" and instead noticed the Hearing to discuss the possible revocation of Avis' Use Permit. Any such act would inevitably move this administrative-type complaint into the more serious realm of civil litigation. Avis hopes to avoid that. Avis remains open to meeting with the individual

Felix Reliford  
June 22, 2007  
Page 3

making these complaints in the hopes of better understanding his individual concerns and trying to find an amicable resolution. Please understand that any revocation of Avis' use permit at this time will be met with immediate legal action.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin P. Montee', written over a horizontal line.

Kevin P. Montee

Encls.

cc: client

## Parking Analysis

Tenant	Classification	Area (in Sq. Ft.)	1 Parking Space required for each: (Per Milpitas Ord.)	Parking Spaces Required
<b><u>Parking Space Requirements:</u></b>				
<b><u>Building 1:</u></b>				
Unit 101 - Farmer's Insurance	Insurance Office	1,350 s.f.	1/ 200 s.f.	7
Unit 103 - Elegant Tailoring & Bridal	Tailor & Bridal Shop	1,350 s.f.	1/ 200 s.f.	7
Unit 105 - The Postal Shop	Mail Service	1,350 s.f.	1/ 200 s.f.	7
<b>Subtotal</b>		<b>4,050 s.f.</b>		<b>20</b>
<b><u>Building 2:</u></b>				
Unit 174 - Baker's Square Restaurant	Restaurant and Pie Sales	5,372 s.f.		
	Restaurants based on no. of Seats	180 seats	1/ 3 seats	60
	plus 10% for Employee Parking		10 %	6
<b>Subtotal</b>		<b>5,372 s.f.</b>		<b>66</b>
<b><u>Building 3:</u></b>				
Unit 148 - Avis Rent-A-Car	Car Rental	1,015 s.f.	1/ 200 s.f.	5
Unit 146 - Holiday Cleaners	Dry Cleaning Service	650 s.f.	1/ 200 s.f.	3
Unit 142 - BPI Money Remittance Corp.	Money Transfers	560 s.f.	1/ 200 s.f.	3
Unit 140 - Calaveras Veterinary Clinic	Veterinary Practice	1,413 s.f.	1/ 225 s.f.	6
Unit 128 - Cosmoprob Prof. Salon Center	Wholesale Beauty Products	2,168 s.f.	1/ 200 s.f.	11
Unit 126 - Mary Jane L. Fuster DMD	Family Dentistry	1,132 s.f.	1/ 225 s.f.	5
Unit 122 - Realty World Alliance	Real Estate Office	2,925 s.f.	1/ 200 s.f.	15
<b>Subtotal</b>		<b>9,863 s.f.</b>		<b>48</b>
<b><u>Building 4:</u></b>				
Unit 120 - Carl's Jr.	Fast Food	2,275 s.f.		
	Restaurants based on no. of Seats:	50 seats	1/ 2.5 seats	20
	plus 1/50 of order/take out area	300 s.f.	1/ 50 s.f.	6
<b>Subtotal</b>		<b>2,575 s.f.</b>		<b>26</b>
<b>Total Area</b>		<b>21,860 s.f.</b>		
<b>Total Spaces Required</b>				<b>160</b>

### Parking Spaces Provided:

Standard Spaces	154
Accessible Spaces	6
<b>Total Spaces Provided</b>	<b>160</b>

## avis budget group

THOMAS W. OLSSON  
OFFAIRPORT EXPANSION MANAGER

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